Supreme Court, U.S.
FILED
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No. 08-936

IN THE
Supreme Court of the United States

CAROLE L. TAYLOR

Petitioner,

v.

NEGLEY PARK HOMEOWNERS ASSOCIATION, ET.AL.

Respondents,

On a Writ Of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to Rule 44.2, Petitioner Respectfully Petition this Court for Rehearing.

The Petitioner is seeking a Rehearing of the case for consideration of Writ OF CERTIORARI for the petitioner believes it warrants a review. Taylor has been oppressed for years under the authority of the council and without dissolution of the Code of Regulation and Declaration she will continue to be oppressed. .

The Council is made up of all Caucasians The Council has been in place since 1978.

The Code of Regulations Article 9 Section 6 (refer to Appendix E), Writ of Certiorari, is written in such a way to make sure the Council are free of suit unless they act as a group or individually bad faith and self dealing, for the decision to purchase or not purchase a unit in the condominium is done by the council who are members of the State of Pennsylvania, only serve for two years, Article 1V Section (1), (refer to Appendix E), Writ of Certiorari, and thus, cannot be sued for their volunteer participation. They are not compensated for their services.

What the Petitioner did not highlight in her Writ of Certiorari was the fact that the United

States Constitution was set up to protect the rights of the minority.

The evidence of the racial discrimination is found in the council's identical Affidavits (refer to Appendix M), filed with the court June 8, 2006, stating,

> "If an election were held among the unit owners to elect a new three – person Council, I would not cast any vote in favor of electing Carole L. Taylor to serve on the Council, or in favor of any non-unit owing person that is nominated by Ms. Taylor."

The Council clearly shows their intent to discriminate against the Petitioner (the only person that is not Caucasian), not allowing her to buy the unit, but also not allowing her to have a seat on Council. This housing discrimination and oppression does not give the Petitioner a voice to decision making as the other unit owners have. This is a violation of her Constitutional Rights to Life, Liberty and the Pursuit of Happiness, under the First, Fifth, Sixth and Fourteenth Amendments.

The Petitioner is denied a quality of life, because of her disabilities. The walking up and down the steps is very difficult because of her legs and feet problems. Also, the poor lighting of one pole light makes it very difficult to see at night. So, when a first floor unit became

available, the Council discriminated against the Petitioner and refused to sell the first floor unit to her.

The all White Council denied her a first floor unit that was for sale. The Petitioner cannot be happy when she is constantly being oppressed. The Petitioner is constantly being told what to do by this all White Council, not allowing her to be on Council, thus, giving her no voice. These are constitutional rights that cannot be taken away and are guaranteed to all American citizens.

The Code, Article 9 Section 6 (refer to Appendix E), Writ of Certiorari, gives the Council the right of first refusal when any unit owner is seeking to sell their unit. Thus, giving the Council who are unit owners the power to put in the building individuals of their choice.

The Council will not exercise their right of first refusal if the unit that is for sell is purchased by another Caucasian individual.

The unit that was for sell was denied to the African, American. The third party that the Respondents want to sell it to was a Caucasian. The Council has been in place for many years and by not holding annual meetings, they have remained in place.

Since 1978 there has never been an African American living in the building. After the

Petitioner purchased her unit in 2003 the three Whites responded that they had no choice in her buying her unit for it was a special case, it was from an estate, and the Code of Regulations does not govern property that comes out of an estate, They had no choice in the decision whatsoever, as the vice president Margaret Messmer said to the court.

In addition, to the constitution protecting the rights of the minority, and discrimination in housing is also against the law.

Once again the three Caucasians women who are condo owners directly told the Petitioner that, they had no say in her (the Petitioner) buying the unit she has now, but they had a say in her buying another unit. This clearly implied that the Petitioner would not be allowed (by them) to buy another unit in the building.

Further, the Pennsylvania Superior Court's only reason for denying the appeal was that the Pennsylvania Common Pleas Court had given the Council a remedy. The remedy was to follow the Code, "Rules and Regulations" and to this day, they have not followed the Code.

However, the three owners) have not followed the remedy given to them. More importantly, March 8, 2009 there was the annual meeting and once again the Council

did not follow the rules. First, since June 1, 2005 Margaret Messmer moved out of the State of Pennsylvania, and January of 2009, Theresa Flati has not resided in her unit. Yet, both of the Council members were voted back on Council. The Code states an individual can only sit on Council for two years. Each of these individuals has served on Council for over seven (7) years.

So, even though the Lower Court, by Court Order September 11, 2006 (refer to Appendix B, Writ of Certiorari, told the Council to follow the rules they have not. This case also affects the general public at large, and can have an impact on discrimination cases in the following ways:

1. To show that housing discrimination, even when it is being disguised, is still against the law;

2. When there are written Code of Regulations and the must be followed exactly as outlined, and the Council members are not allowed to pick and choose what regulations they will follow. The Uniformity Property Act of 1980 governs the condominiums in the nation.

3. Discrimination of any kind (race, creed, religion and denomination.), is against one's Constitutional Rights.

4. The Pennsylvania Lower Court Judge should not have given the Council a remedy and offer no guidelines, as to whether or not the remedy is being followed. In this case a remedy was handed down by the Court of Common Pleas.

5. The Pennsylvania Superior Court said since there was a remedy offered that affirmed the lower court order of September 11, 2006, but no where did the court implement an offer a plan in case the remedy was not being followed by the Council.

6. Lastly, the Council is in violation of the Pennsylvania Common Pleas Court Order to follow the Code of Regulations and the Declaration. Therefore, the Petitioner respectfully requests a Writ of Certiorari for Rehearing.

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PETITION FOR REHEARING

Petitioner has been discriminated against in housing by the conduct of the respondents who worked together in concert as a council for the Negley park home owners association and that is why the petitioner filed a complaint in the Pennsylvania courts in the first place. Petitioner believes that section 42 U.S. (1982) [1] provides that all citizens Black shall have the same rights as enjoyed by White citizens regardless of what state you live.

The United States shall have the same right in every state and territory to buy, purchase, or lease a property. These given rights were supported by the United States government when first they passed the Thirteenth amendment on January 31, 1865, which abolished slavery and involuntary servitude, and again on June 13, 1866, when the Fourteenth Amendment was passed, then ratified in July 9, 1868, which not only defined citizenship, but also supports the beliefs all individuals have the rights of life, liberty and the pursuit of happiness. **Brown vs. Board of Education, 349 US 294 (1995)** [2] found that it was unconstitutional for any individual to be segregated in any school facilities whether they were unequal or the facilities where the

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1. 42 US (1982)
2. Brown vs. Board of Education. 349 US 294 (1995

same for the results were feelings of inferiority that couldn't be changed and it was unconstitutional.

In this case, the Petitioner v. Respondents uses their control as a council to violate the rights of the only Black person living there.

This Code of Regulations and Declaration that was drafted in 1978 with a particular Code Article 9 Section 6 (refer to Appendix E) Writ of Certiorari, which was put in place to avoid of being accused of discrimination for it is the council that is given the right of first refusal appears to avoid the unit owners of being accused of racism. The unit owners elect the Council; a volunteer body not compensated for their services and is to only to serve for two years.

This Council has been in place since the Petitioner purchased her place in 2003. The First Council until the first annual meeting held in 1979. the Code Article 4. Section 3 but, Article 5, Section 1 (refer to Appendix E) Writ of Certiorari, allows for four Council members, a president, a vice-president, a secretary, and a treasurer. The current Council is using the First Council of 1978 consisting of a president, vice-president, and secretary/treasure the individuals that purchased the building and

turned it into Condominiums, that is in force today. The Code would stay in place until 1979 the annual meeting to elect new council. This Council/Respondents are still in place today. The Council/Respondents has used this part of the Code, Article 4, Section 3(refer to Appendix E) Writ of Certiorari, without recognizing the Declaration states the name of the first Council. Their names are: G. Brinton Motheral III, Samuel Kamin, and Robert Kamin, the original drafters in 1978 of the Code of Regulations and Declaration, not Patricia O' Kane, Theresa Flati, and Margaret Messmer.

This building was purchased, in 1978 from another real estate company that originally called it the Negley park apartments, and the original drafters of the Code of Regulations and Declaration renamed it Negley Park Condominiums. This real estate company of three companiesimmediately sold all four (4) in 1978, but kept in place the Code and Declaration for any new owners to follow.

Therefore, the Petitioner is the odd ball out, for she purchased her unit in 2003, and the other three unit owners have been in the building since 1978, 1985, and 1998 and have been on Council since they purchased their

units. They are all Caucasians, and to this day, they make up the Council and in violation of the Code, Article 4, Section 3 (refer to Appendix E) Writ of Certiorari for you are only to serve for two years. They refused to hold an annual meeting and by so doing, they used the Code, Article 4 Section 3 (refer to Appendix E) Writ of Certiorari, as long as they didn't hold any annual meetings, they could stay on Council, forever.

Recently, the petitioner recalled an incident when she purchased her unit in 2003 and met with the council where the president out of nowhere stated, "we are all Catholics and we listen to a certain kind of music." The Petitioner said she was a Christian and there is only one God.

It is the Petitioner that is feeling repression needing to prove her oppression to show the importance of her Writ of Certiorari, because she is only one person, and her need for justice may not have the impact needed for thousands is her rights to life, liberty, and the pursuit of happiness granted by the U.S. Constitution, any less valuable, then the masses?

Why allow the continued oppression, all Americans of the rights of life, liberty and the pursuit of happiness is one of the major Amendments to the Constitution to protect the

rights of the minority against the will of the majority even though, the Petitioners rights may be limited in scope.

The U.S. Constitution was founded on discrimination of the less fortunate and what affects one individual is no less important if it affects the discrimination of thousands. You do not know if thousands who are in a similar situation is not being affected.

The Petitioner has had enough of this blatant discrimination of her rights as an unit owner and a member of the association and the petitioner will continue to be oppressed by this Code of Regulation and Declaration and the Petitioner believe will affect others who may purchase a unit in this building who are not Caucasian.

In the case, **Heart of Atlanta Motel v. United States,** 379 US 241 (1964),[3]. where the owner of the Heart of Atlanta Motel discriminated against Blacks, by not allowing them to stay at his motel. When confronted by the government concerning Congressional acts or regulations, the owner stated that he did not own an interstate business and therefore was not affected by the congressional acts or regulations.

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[3]. Heart of Atlanta Motel v United States, 379 US 241, (1964)

In a unanimous decision, the court ruled that he did have an interstate business and had to adhere to congressional acts or regulations that forbid the discrimination of individuals.

The Council's vice-president, Margaret Messmer, who had her unit for sale refused to sell it to the petitioner because she was Black. May 15, 2005 in spite of the violation of the Code, Article 9 Section 6 (refer to Appendix E) Writ of Certiorari, she attempted to sell it to a third party with a closing date set, before the Petitioner even knew about it, and this party was also Caucasian.

The Respondent Margaret Messmer when she found that the Petitioner wished to purchase the property on the first floor, because of her permanent disability, was told you are not Council, you have no vote. I will not sell my property to you and you will never be on Council.

The Petitioner is a 25% owner but did not get the opportunity in the investment, because the Council acted as the unit owners, refuse to hold annual meetings, keeping the Petitioner from ever becoming a Council member.

Margaret Messmer came back into town on (see annual minutes) February 19,2007 (refer

to Appendix Q) Writ of Certiorari, who lives in Massachusetts, purchased property in Arizona, came back into town to be reelected back on council just recently March of 2009, this same Council, the Respondents reelected themselves back on Council just to keep the Petitioner off of Council.

Margaret Messmer still lives out of the state of Pennsylvania and since June of 2005, her unit has stood empty. This is the unit that is on the first floor the Petitioner tried to buy because of her disability. Another member of Council, Theresa Flati, is said, is in a nursing home, but was voted back on Council.

It is for the Council violating the entire Code, the Petitioner is still being denied her rights to life, liberty, and the pursuit of happiness. She is respectfully, requesting a Rehearing of her Petition for Writ of Certiorari be granted.

The Respondents acts in concert with one another in all of its dealings carrying out the business affairs of the condominium in their daily activities as the Council that only have four units, Council has the majority vote the Petitioner only has one vote, Because the other three vote as a group, the Petitioner will always be controlled by the other three unit owners.

The Council to keep from keeping the common elements in a safe condition and free from any harm to the unit owners, and to ignore the Code of Regulations mandated by the Declaration to not violated Article 9 Section 3, non compliance and Article XII, Exculpability: Malfeasance and Misfeasance, (refer to Appendix E) Writ of Certiorari, acting in bad faith and self dealing.

This has gone on for many years, leaving the Petitioner perplexed as to what to do, that caused her to file a lawsuit in the first place in 2005. This oppression should not be allowed to continue, so the Petitioner is seeking a rehearing of her Writ Of Certiorari under the Constitution does not allow for discrimination as a way of oppressing any individual. The U.S. Constitution and Civil Rights Act of 1968 and 1982,[4] is in place to keep anyone from discriminating against another, and because the Petitioner is only one person, the majority unit owners are on Council, so the Petitioner has no control on how they carry out the business affairs of the condominium on a daily basis.

The Negley Park Code and Declaration of

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4. Civil Rights Act of (1968) and (1982)

Condominium Ownership provides for termination of the condominium structure in Paragraph 13, in which it authorizes termination as provided by the Unit Property Act. The Act[5]. (since repealed and replaced with the Uniform Condominium Act, 68 Pa. C. S. A. §3101,[6] but still applies to condominiums formed prior to (1980), provides for "removal" of the association upon agreement of all unit owners who are holders of a mortgage, a judgment, or other liens against the property. 68. P. S. §700.601.[7] Neither the new act nor the old act specifically provide for judicial termination.

However, Courts have the authority to review the actions of condominium councils, and to apply the principles of law, including the laws governing corporations and unincorporated associations. Specifically, in Lyman v. Boonin, 635 A. 2d 1029 (Pa.1993)[8]. This court found that when an association engages in such self-dealing or bad faith, and the Act is silent, judicial relief is available. Such is the case at bar.

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[5]. Unit Property Act (1978)

[6]. Uniform Condominium Act. 68 Pa C S.A.§3101

[7]. 68 P.S. §700-601

[8] Lyman v. Boonin, 635 A. 2d 1029 (Pa. 1993)

The record is replete with testimony that the other three owners and the members of council thwarted. Petitioner's attempt to enjoy her unit and to have the rights to life, liberty and the pursuit of happiness.

The alleged Council has and continues to engage in a systematic oppression of the Petitioner's right as a unit owner, and a member of the Association. Requiring them to adhere to the Code of Regulations does nothing even to this day to stop this oppression? The only remedy the Petitioner has is the dissolution of the condominium entity.

I. THE UNITED STATES SUPREME COURT ERRED IN DENING THE PETITIONER'S WRIT OF CERTIORARI FOR SHE BELIEVES HER TREATMENT OF DISCRIMINATION IS VALID AND HAS AN IMPACT ON HOW THE COUNCIL WILL CONTINUE TO TREAT ANYONE WHO LIVES IN A BUILDING, PURCHASED FROM A REAL ESTATE COMPANY WHO HAS PROPERTY ALL OVER THE STATE OF PENNSYLVANIA AND USE THE SAME CODE AND DECLARATION WILL FACE THE SAME PROBLEMS THE PETITIONER HAS AS A MINIORITY AND WILL ALSO BE OPPRESSED AND THAT IS

CERTAINLY NOT THE INTENT OF OUR FORE- FATHERS, WHO FRAMED THE CONSTITUTION.

II. SO THE DECISION TO NOT DISSOLVE THE ASSOCIATION, LEAVE NO MECHANISM IN PLACE TO MONITOR WHETHER OR NOT THE COUNCIL IS COMPLYING WITH THE COURT 'S ORDER OF SEPTEMBER 11, 2006, ALLOWING THE COUNCIL TO CONTINUE TO ACT IN BAD FAITH, AND SELF-DEALING.

It is clear that the evidence educed at trial is that the association and Council do not exist as entities that are permitted to bring suit in the Commonwealth of Pennsylvania, i.e. they have failed to register as required by the law. Certainly, a court, even sitting in equity, cannot be permitted to fashion a remedy, that a litigant is not legally entitled. Further, the Pennsylvania Lower Court committed an error of law by relying on Sack v. Feinman, 413 A 2d 1059 (1980)[9] The Council, who are unit owners, continues to wield its Code of Regulations with exclusion of the only other unit owner. The Council refuses to allow to participating. The only unit owner not on Council is the Petitioner who is African American. The Council has not heard or carved out fairness for all unit owners from the day the Code and

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9. Sack v. Feinman, 413 A. 2d 1059 (Pa.1980)

Declaration was invented in 1978. The Council is set up in such a way, each person has a vote, and the unit owners are made up of family. The Petitioner will never have a voice in the decision- making of the business affairs of the alleged association. The only remedy is to dissolve the Association, and form a new representation document in keeping with fairness, regarding all unit owners

Finally, the Court's ruling has overlooked the Petitioner's permanent disability keeping the Council in place, and the Code and Declaration in place. The undressed conflict should not stand.

The harm is the ignoring of the Petitioner's rights under the Constitution and the Code and Declaration, by turning a death ear to the major problems facing the Petitioner by the Council who controls the life of the Petitioner and the U.S. Constitution granted to the minority to protect against the will of the majority, that racism is against the law. The harm the Petitioner will endure to seek everyday relief, is to be forced to move. The Court had no role checking the reach of enumerated powers—and was fundamentally, in conflict with the daily actions by the Council, to conduct the business affairs of the Negley Park according to the Code and Declaration, in fairness to all unit owners. Pennsylvania Court's have found that if a governing body

either failed to act, or acted in such a manner as to substantially defeat the expectations of the members, for the "Court has authority to dissolve the entity. **Gee v. Blue Stone Heights Hunting Club, Inc.** [10] 604 A. 2d 1141 (Pa. Cmwlth, 1992). When a minority shareholder, such as Petitioner is, "oppressed," judicial relief is available. **Leech v. Leech**, [11] 762 A. 2d 718 (Pa. Super. 2000).

As a consequence, despite the court order issued on September 11, 2006,.(refer to Appendix B) Writ of Certiorari to continue to have the freedom to continue to do as they please, regardless of whom it hurt The Court's decision is not apparent from the opinion. The Petitioner believes it is from the Court's own failure to have the Council/ Respondents, believe their only real consequence from dissolving the Code and the Declaration is that the Petitioner shares the same roof, and the same garage area, which was not true regarding the garages for there are over 30 garages in the alley, in which all property owners share in the up-keep

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[10]. **Gee V. Blue Stone Heights Hunting Club, Inc.** 10 604 A. 2d 1141 (Pa. Cmwlth. 1992)

[11]. **Leech v. Leech**, 762 A. 2d 718 (Pa. Super. 2000

The Respondents/Council has been on council since 1978, another in 1985, and the third in 1998. The judicial has broad discretion to consider even the limited public concerns of one, when discrimination is practice on a daily basis that will most likely affect the masses.

The Petitioner is seeking a reversal and to remand the case back for merit consideration or dissolution of the Code and Declaration of the Negley Park) See: **Karpe v. Borough of Stroudsburg, Brodsky v. Philadelphia Athletic Club,** [12] 419 A. 2d 1285, 1287 (Pa. Super. 1980), **S.N.T. Industries, Inc. v. Geanopulos,** 516 2d 705 (1986 and **S.N.T. Industries, Inc. v. Geanopulos,** [13] 525 A. 2d 736,737-738 n. 1 (Pa. (1987) (Supreme Court reversed and remand, it back for merit consideration) Where the State Courts decided not to consider the appeal merits, the Petitioner has no adequate remedy at law except to dissolve the Code and Declaration. Petitioner Respectfully seeks U.S. Supreme Court grant the Writ of Certiorari Rehearing.

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[12] **Karpe v. Borough o Stroudsburg, Brodsky v. Philapelphia Athletic Club**
419 A. 2d 1285. 1287. (Pa Super 1980)

[13] **S.N.T. Industries, Inc. v. Geanopulos,** 516 2d 705 (1986) and **S.N.T. Industries, Inc. v. geanopuls**, 525 A. 2d 736,737-738 n. 1 (Pa. (1987)

CONCLUSION

For the foregoing reasons, the petition for rehearing on the Writ For Certiorari on April 16, 2009 should be granted.

Respectfully submitted,

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April 16, 2009

CERTIFICATE OF PETITIONER, *PRO SE*

As Petitioner *Pro Se*, I hereby certify that this petition for rehearing is presented in good faith and not for purposes of delay and its grounds shall be limited to intervening circumstances of a substantial or controlling effect, or to other substantial grounds not previously presented.

Carole L. Taylor

"s/" Carole L. Taylor
For Petitioner, *Pro Se*